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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM THOMAS BATES,

Defendant and Appellant.

F078090

(Super. Ct. No. BF169088A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Kenneth C. Twisselman II, Judge.

Erica Gambale, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Meehan, J., and Snauffer, J.

STATEMENT OF THE CASE

On August 10, 2017, an information was filed charging appellant William Thomas Bates with possession of methamphetamine for sales (Health & Saf. Code, § 11378; count 1). It was further alleged that Bates suffered four prior possession for sales convictions pursuant to Health and Safety Code section 11370.2, subdivision (c). Finally, it was alleged that Bates suffered two prison priors pursuant to Penal Code section 667.5, subdivision (b).

A jury trial began on July 30, 2018. On July 31, 2018 the prosecution dismissed all four of the priors alleged pursuant to Health and Safety Code section 11370.2, subdivision (c). On August 3, 2018, the jury found Bates guilty of count one. After he waived a jury trial on his prison priors, the trial court found those priors true.

On August 31, 2018, the trial court sentenced Bates to a split sentence of five years; the upper term of three years as to count 1 plus one consecutive year for each of the two prison priors. He had 31 actual days of credit. The first two years of this sentence were to be served in the county jail and the remaining three years were to be served on supervised release pursuant to Penal Code section 1170, subdivision (h). The trial court then imposed a \$50 fee pursuant to Health and Safety Code section 11372.5, plus a \$155 penalty assessment; a \$100 fee pursuant to Health and Safety Code section 11372.7, plus a \$310 penalty assessment; a \$30 fee pursuant to Government Code section 70373; a \$40 fee pursuant to Penal Code section 1465.8; a \$300 restitution fine per Penal Code section 1202.4; and a \$300 revocation fine per Penal Code section 1202.45, suspended subject to mandatory supervision revocation proceedings.

On September 11, 2018, Bates filed a timely notice of appeal.

STATEMENT OF FACTS

Prosecution Case:

On July 13, 2017, Bakersfield Police Officers Thomas Hernandez and Imaad Nuriddin observed Bates upon entering the parking lot of a motel located at 906 Union

Avenue in a “high drug trafficking area.” Hernandez contacted and searched Bates. Bates had \$2,123.15 cash, in various denominations, in his right front pants pocket and a syringe in his back right pocket. The cash was “messed up” and “folded in different ways.” The syringe was preloaded with suspected methamphetamine.

Officer Hernandez also found three baggies of suspected methamphetamine on Bates’s person. The two smaller baggies of suspected methamphetamine each weighed .5 grams. The largest of the three baggies found weighed 27.2 grams. The baggies were found in Bates’s back right pocket. When they searched Bates’s room, room 208, officers also found a digital scale with drug residue. Four other people were inside the room. During this police contact, Bates did not exhibit any signs of being under the influence.

Renee Peterson, a drug testing analyst, examined and tested the suspected narcotics and opined the substance was in fact methamphetamine. Bakersfield Police Detective Jared Diederich testified to his training and experience regarding narcotics investigations. He explained the various “indicia” of drug sales, including large amounts of cash and digital scales. Diederich provided his expert opinion regarding a usable quantity of methamphetamine. When presented with a hypothetical question involving facts similar to those in this case, Diederich opined the methamphetamine possessed in the motel room was possessed for the purpose of sales.

Over defense objection, the prosecutor admitted the abstract of judgment and booking photo from Bates’s prior conviction for possession of methamphetamine for sales. Then, again over defense objection, the trial court took judicial notice of Bates’s prior case in which he pleaded guilty to a single count of possession of methamphetamine for sales (Health & Saf. Code, § 11378).

Defense case:

Jessica Jewett is Bates’s friend. She was the manager at the motel where Bates previously lived and worked as the maintenance person. That motel was in a high crime

area, so Bates kept his pay in the motel safe in Jewett's office. Jewett recalled paying Bates approximately \$300 per month in cash and he then lived at the motel for free. Sometimes, Bates gave Jewett extra cash and asked her to keep it in the safe with his pay. She remembered that before he removed the money from the safe on the day he was arrested, he had about \$2,100 in the safe, mostly in \$100 bills.

Cynthia Holguin has known Bates for approximately 10 years and knows he uses methamphetamine. She has seen him both smoke and inject methamphetamine. Holguin believed Bates used approximately "1/16th" or 1.75 grams of methamphetamine at a time. Holguin stated that Bates used the narcotic every day. He looked and acted the same whether he was sober or under the influence. Holguin knew that Bates kept his methamphetamine stash in a baggie and that he was paid in cash by the motels where he worked.

Bates testified in his own defense. He indicated that he began using methamphetamine in the 1980's. He admitted he had a prior conviction for possession of methamphetamine for sales from 2010. He was selling methamphetamine at that time "to survive." After that 2010 arrest he entered a rehab facility. He has not sold any methamphetamine since that time, but he still uses every day. Bates said he was living at the motel where he was seen and contacted by the police. He worked at that motel as a maintenance person and also made money recycling. Bates was saving his money to purchase a truck for his sister for her birthday.

Bates described his "major" drug habit. He indicated that, at the time of his arrest, he was using between 2.5 and 3 grams of methamphetamine each day. He both smoked and injected the methamphetamine.

When questioned about this case, Bates admitted the methamphetamine found by the officers belonged to him. He stated that he was working on a sink in one of the motel rooms when the largest of the three baggies of methamphetamine "fell out." Because Bates was such a heavy user, he planned to keep that baggie. Bates indicated he had

collected the money from the safe the same day as his arrest so that he could purchase the truck for his sister. He was also using his money to buy an ounce to an ounce and a half of methamphetamine every two-three weeks. He performed side jobs for friends in order to supplement his income.

Finally, Bates claimed he was “high” while testifying and that the only time he has ever been sober was when he was in prison.

Rebuttal:

Detective Diederich was recalled for rebuttal testimony. He testified that, in the thousands of contacts he has had with methamphetamine users during his career, less than five have ever admitted to using as much methamphetamine as Bates claims he uses. He further testified that it was not possible to inject “1/116th” or 1.75 grams of methamphetamine because a syringe only holds .5 grams.

APPELLATE COURT REVIEW

Bates’s appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that Bates was advised he could file his own brief with this court. By letter on February 28, 2019, we invited Bates to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.